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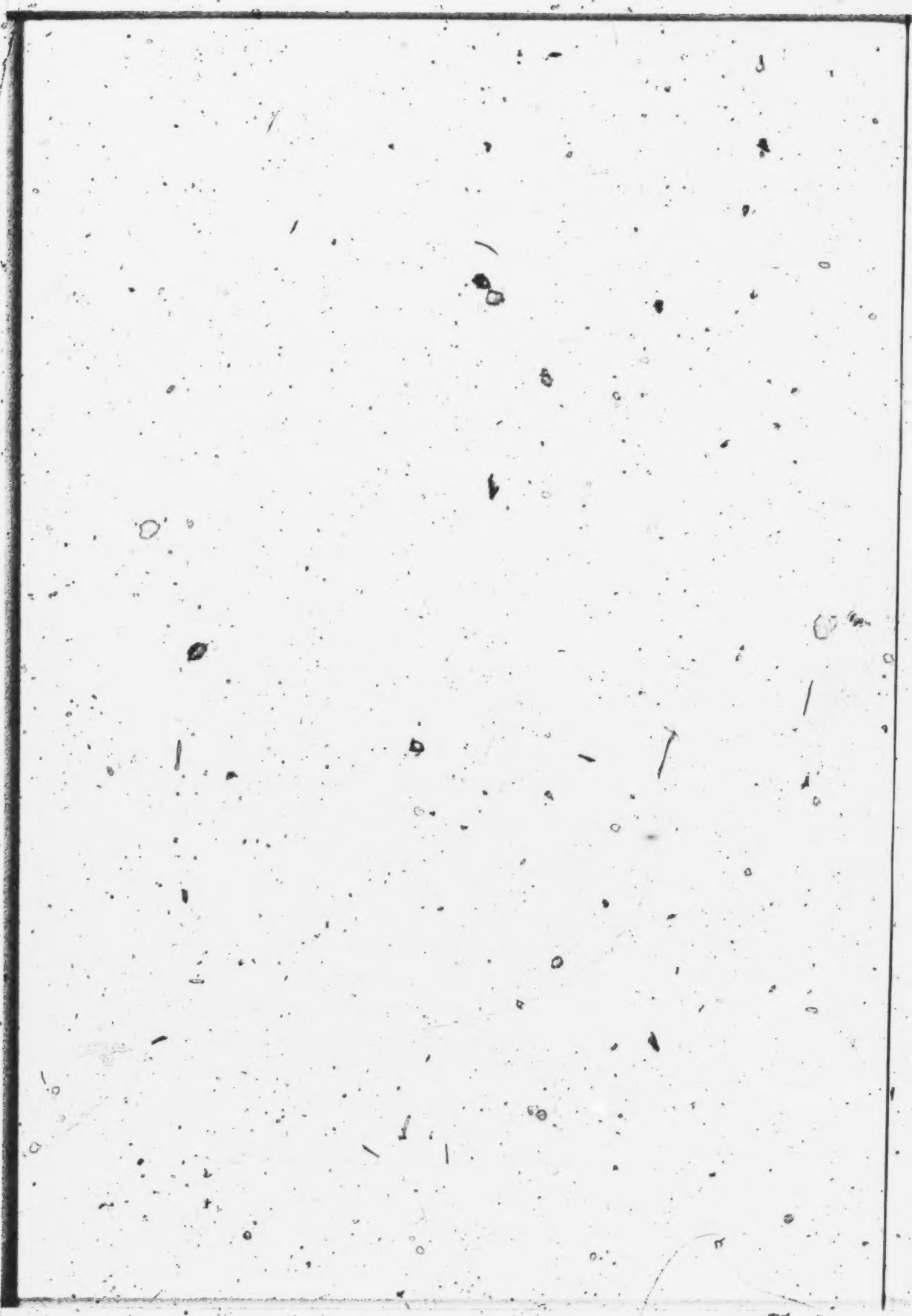

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 610.

PEOPLE OF THE STATE OF ILLINOIS ex rel. JOHN MAERAS, Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellant,

vs.

CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTHWESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois.

MOTION TO DISMISS OR AFFIRM.

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss these appeals or to affirm the judgment of the Illinois Supreme Court, for the following reasons:

I.

A. The limited records on appeal present no grounds for jurisdiction to review.

B. The appeal to this Court is not timely.

II.

Even if this Court considers more than the limited record reviewed by the Illinois Supreme Court, there are cogent reasons why there is no jurisdiction to review this case by appeal or certiorari.

A. The former decision of this court passed upon the jurisdictional questions here presented.

B. The equal protection and due process clauses of the Fourteenth Amendment do not protect the State or any of its arms.

C. The alleged violations of the Fourteenth Amendment create no discrimination against appellant.

D. The appellant's right of review on direct appeal is foreclosed by failure to make a timely presentation of the constitutional grounds before the Supreme Court of Illinois.

E. No question presented for consideration upon appeal.

F. No substantial federal question is involved. The people raise only an evidentiary question.

STATEMENT OF THE CASE.

These are direct appeals from judgments of the Supreme Court of the State of Illinois entered on January 19, 1967, dismissing appeals taken by the appellant from final judgments entered by the Circuit Court, Third Judicial Circuit of Illinois, Madison County, on April 20, 1966. The latter judgments were entered pursuant to mandates of the Supreme Court of Illinois issued on September 30, 1965, which had reversed and remanded judgments previously rendered by said Circuit Court.

This litigation was initiated by objections filed by the appellees to the real estate taxes extended against the assessed valuation of their railroad operating property located in Madison County, Illinois, during the period 1957 to 1962, inclusive, pursuant to the remedy recognized by the Illinois Supreme Court in the **Callahan** case and subsequently confirmed in the **C. B. & Q. Railroad Co. Valuation** case.[1] The objections were filed in response to the annual application of the People of the State of Illinois ex rel., the incumbent county treasurer and ex officio county collector of Madison County seeking a judgment for delinquent taxes. The objections of the railroads which are in dispute in the instant cases were based upon a failure of the Department of Revenue to assess and equalize all taxable property in Madison County at its full fair cash value as required by the Illinois Revenue Act of 1939 as amended, alleging that the operating property of the railroads was annually assessed at its full fair cash value whereas the value of locally assessed property, representing approximately 95% of taxable property in the county, was debased to levels averaging 50% of full value during the years 1957 to 1962. The railroads sought

[1] People ex rel. Callahan v. GM&O RR. Co., 8 Ill. 2d 66, 132 N. E. 2d 544 and CB&Q RR. Co. v. Dept. of Revenue, 17 Ill. 2d 376, 161 N. E. 2d 838.

refunds of protested taxes to the extent that the taxes paid exceeded the amount which they would have been required to pay if all property had been assessed and equalized to the level of 100% of full fair cash value as required by statute.

The pending objections of all of the railroads were consolidated for trial and by stipulation entered into by all of the parties, it was agreed that:

> "The said Objectors have each objected to taxes levied upon its railroad property in Madison Couny, Illinois, for the several years for which their objections are pending and have been consolidated for trial in this proceeding, because of **the alleged unlawful discrimination resulting from the alleged debasement of equalized assessed valuations of locally assessed property in Madison County for each of said years and the alleged equalized assessed valuation of such railroad properties at full fair cash values, and that this consolidated case is to be tried upon said objections**, without said causes being merged and with the maintenance of separate dockets and with separate final orders in all cases at the conclusion of the trial proceedings."

After a lengthy trial and consideration of voluminous testimony and exhibits, the trial court found that locally assessed property had been debased to levels varying from 48.14% to 51.4% during the years in question and that the railroads had likewise been assessed at less than full value but at levels so much higher than local property that it constituted constructive fraud entitling the railroads to a refund of only a portion of the taxes paid under protest. The judgment order of the trial court expressly reserved jurisdiction of the court to approve the refund computations and implement the process of refund and distribution of the monies in the tax protest

fund. The court added "there is no reason for delaying the enforcement or appeal of this order, judgment and decree."

The railroads perfected a direct appeal to the Illinois Supreme Court only with respect to the trial court's determination that their operating properties had been assessed at less than full value. **No cross appeal was taken on behalf of the collector** and therefore the findings of the trial court regarding the debasement of locally assessed property are now undisputed. The Illinois Supreme Court concluded that the trial court proof established "assessments of the railroads at substantial full value and that the objectors are entitled to the refunds prayed for rather than refunds fixed by the trial court, which in each case was to be computed upon the straight average formulaic result without application of the judgment factor." In its judgments which became final on September 27, 1965 on denial of rehearing, the Supreme Court reversed the judgments of the trial court and remanded the cases to said court, directing a refund of taxes to the railroads computed in conformity with earlier decisions of the Supreme Court of Illinois as outlined in the Hillison and Kohorst cases[2] instead of the straight formulaic average used by the trial court in computing refunds. The opinion appears at Appendix D, page A-11 of the Appellant's Jurisdictional Statement.

From those judgments of the Supreme Court of Illinois, the appellant appealed to this Court, asking that the appeals also be treated as a petition for a writ of certiorari, which case was docketed at the October term, 1965, as No. 1046. The appellant filed a Jurisdictional Statement and the appellees there, who are the appellees here,

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[2] See People ex rel. Hillison v. CB&Q RR. Co., 22 Ill. 2d 88, 174 N. E. 2d 175, and People ex rel. Kohorst v. GM&O RR. Co., 22 Ill. 2d 104, 174 N. E. 2d 182.

filed their joint motion to dismiss the appeals, or in the alternative, to affirm the Supreme Court of Illinois assigning three points for the dismissal: (1) that appeal was inappropriate since the constitutionality of no state statute was involved; (2) that there was no substantial federal question involved; and (3) that the judgments of the Supreme Court of Illinois lacked finality as a basis for jurisdiction of this Court.

On May 16, 1966, this Court dismissed the appeal for want of jurisdiction and treating the papers as a petition for a writ of certiorari, denied certiorari (284 U. S. 213, 16 L. ed. 2d 480, 86 S. Ct. 1456). The appellant then filed its petition for rehearing and, in the alternative, asked this Court to clarify its dismissal by stating whether it was based upon the lack of a federal question, or because of the lack of finality in the judgments. In its petition for rehearing, the appellant said, "If the basis of the May 16, 1966, decision is the absence of a federal question, there is no reason to incur the effort, expense and delay in pursuing the pending appeals below". The application for rehearing was denied by this Court on June 13, 1966, without the clarification requested by appellant (384 U. S. 994, 16 L. ed. 2d 1011, 86 S. Ct. 1885).

Notices of appeal to this Court as above recited had been filed on December 23, 1965. Prior thereto the appellees redocketed these cases in the trial court on November 2, 1965, moved the trial court to enter judgments thereon pursuant to the mandates of the Supreme Court of Illinois, and submitted to the Court under date of November 30, 1965, written orders to carry out such mandates. On April 20, 1966, while the appeals were still pending in this Court, the appellant here withdrew opposition to the method used by appellees in computing refunds and to the entry of such orders (R. 80, pp. 3-4). Based upon such withdrawal of objections, the trial court

entered such orders,[3] the form of which appears in Appendix C, page A6 of the Appellant's Jurisdictional Statement.

The withdrawal by the appellant of its objections to the method of computing refunds was evidently prompted by its desire to avoid the point made by the appellees in the first appeal to this Court that the Illinois Supreme Court judgments were not final, since the appellant promptly had certified copies of said orders filed in this Court and presented to this Court in its Brief in Opposition to Appellees' Motion to Dismiss filed April 25, 1966, the argument beginning at page 79 of said brief that the judgments acquired finality by the entry of the orders by the trial court on April 20, 1966.

On the day after judgments were entered in the trial court on April 20, 1966, the appellant here filed notices of appeal to the Supreme Court of Illinois, and thereafter on September 15, 1966, appellant filed a motion to consolidate the Illinois Supreme Court records in the prior cases docketed as Nos. 38,859-38,904 with the record in the present case. This motion was denied by order entered on September 22, 1966.

Appellees joined in a motion to dismiss the appeals on the ground that the trial court had done nothing more than carry out the mandate of the Supreme Court of Illinois after the appellant had withdrawn all objections

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[3] Docket entry dated April 20, 1966 is as follows:

"Pursuant to the mandate of the Supreme Court of Illinois, and in forms of orders heretofore submitted and requested by the railroad tax objectors, opposition of the People tax applicants heretofore asserted to such forms being now withdrawn as per statement of the People this day filed, the 46 judgment orders heretofore submitted by the railroads are this day signed and entered, to implement the mandates of the Supreme Court of Illinois following judgments reversing and remanding the previous final judgment orders of this court entered August 20, 1964."

to the method of computing refunds and there was nothing further for the Supreme Court of Illinois to review. This motion was taken with the case and on January 19, 1967, the Supreme Court of Illinois dismissed said appeals by its order which appears in Appendix B, page A5 of the Appellant's Jurisdictional Statement and filed its written opinion on said date wherein the Court stated: "The mandate was admittedly followed so there is nothing left to review. This is a deliberate attempt to relitigate the same issues presented on the prior appeal." This opinion appears in Appendix A, page A1 of the Appellant's Jurisdictional Statement. Subsequently rehearing was denied March 27, 1967.

From this judgment of the Supreme Court of Illinois, dismissing its appeal, the appellant now has filed the pending notice of appeal to this Court. The change in name of the relator appellant from George Musso to John Maeras was occasioned by the fact that Maeras was elected as County Treasurer to succeed Musso and has been substituted as a party in this case.

STATUTES INVOLVED.

On the limited record now before this Court for review, there are no statutes involved. However, if the records on the prior appeals, which have not been certified by the Clerk of the Illinois Supreme Court as a part of the record in the instant case, are to be considered, then the following are involved:

The Constitution of the State of Illinois, 1870, Article IX, Section 1, states in part (Ill. Rev. Stat., 1965, p. 21):

> "The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or per-

sons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; * * *" (Emphasis added).

The Illinois General Assembly has enacted provisions in the Revenue Act of 1939, as amended,[4] to implement the foregoing requirements by delegating to the Department of Revenue the authority and responsibility for assessing railroad operating property and certain other types of property, and for equalizing the assessments of all other real estate and personal property assessed by various local officials. The uniformity provisions of Article IX, Section 1, have been carried out in various sections of the Revenue Act which specifically require that all real estate and personal property, both locally assessed and state assessed, be valued for tax purposes at fair cash value. If local assessing officials fail to assess at full fair cash value, the Department of Revenue is empowered to certify to the county clerk an appropriate multiplier to raise the level of assessment of locally assessed property to 100% of full value.[5]

The method of determining the fair cash value of railroad operating property, except non-carrier real estate, is prescribed in Section 80 of the Revenue Act (Ill. Rev. Stat. 1961, c. 120, par. 561). The Department is required to consider the actual or market value of stock and debt and the net earnings of the company over the preceding five years, "and such other information as the Department may consider as bearing on the fair cash value of the property" (which has included reproduction cost of property having a situs in Illinois together with other matters affecting their judgment of value).

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[4] Pertinent paragraphs of the statute are included in Appendix B.

[5] Ill. Rev. Stat. 1961, c. 120, pars. 501, 502, 561, 612, 627 and 632.

ARGUMENT.

I.

A. The Limited Records on Appeal Present No Grounds for Jurisdiction to Review.

The 1967 decision of the Illinois Supreme Court which appellant seeks to have this Court review was concerned only with dismissal of appeals from judgments entered on April 20, 1966, by the Circuit Court of Madison County, Illinois. Those judgments merely carried out the mandates of the Illinois Supreme Court which followed the first appeals to that court and appellant conceded that those judgments did conform to the mandates. The opinion of the Illinois Supreme Court points out:

> "It has long been recognized that once a case has been decided by this court, the only question which may be considered upon a subsequent appeal involving the same issue is whether the trial court followed our mandate (citing cases). The mandate was admittedly followed so there is nothing left to review. This is a deliberate attempt to relitigate the same issues presented on the prior appeal."

Since there is no disputed issue, the limited record which is now before this Court presents no grounds for jurisdiction of this Court to review the 1967 Illinois Supreme Court decision either by appeal or writ of certiorari as provided in 28 U. S. C., § 1257.

B. Appeal to This Court Is Not Timely.

This appeal does not bring to this Court the judgments rendered by the Supreme Court of Illinois following the first appeals in 1965. The Court had remanded the cases

to the trial court for computation of the refunds due the railroads and entry of final judgments. Such judgments were finally rendered by the trial court on April 20, 1966, after appellant here withdrew objections to the method of computing refunds. Those judgments effectively terminated the litigation in the Illinois courts, and became the final judgments by the highest court of the state in which a decision could be had within the meaning of Section 1257 of the Judicial Code. (28 USC, Sec. 1257). If any basis existed for a review by this Court, either by appeal or certiorari, it was from that decision of the trial court which was a continuation of the prior litigation. On the prior appeal to this Court, appellant argued that this action of the trial court cured the lack of finality with respect to the judgments appealed, and we agree. However, appellant now adopts the theory that appellant's prior appeal to this Court at the October term 1965, was dismissed and certiorari denied because of lack of finality of those prior judgments. If that is true, then the time in which appellant might perfect an appeal or file a petition for writ of certiorari in this Court began to run on April 20, 1966, and expired long before service of the notices of the present appeals. **Central New England Railway Company v. Boston & Albany Railway Co.**, 279 U. S. 415, 73 L. ed. 770, 774, 49 S. Ct. 358 (1929).

The admitted purpose of the appeals to the Supreme Court of Illinois was to provide a vehicle to convey the cases back to this Court a second time. However, appellant's motion to consolidate the records of the first appeals as a part of the record on this second appeal was denied by the Illinois Supreme Court. Although the original records of these cases from the trial court through the first appeals to the Illinois Supreme Court have been filed by appellant with the Clerk of this Court, those records are not a part of the official records of the cases now before this Court on appeal.

Cases relied upon by appellant in its Jurisdictional Statement (pp. 7 and 8) to sustain jurisdiction to review questions decided on the first appeal are not in point. Since all of those cases involved remands to the trial court for re-trial, the State Supreme Court's first judgment lacked finality for purposes of review and the subsequent trial court's judgment after re-trial, being again reviewable by the Supreme Court of the state, was not a judgment of the highest court of that state. Thus the continuity of the litigation in the cases cited extended throughout their entire span and such cases would first become reviewable by this Court after the second judgment of the State Supreme Court. In contradistinction, the instant case resulted in a final judgment in the trial court on April 20, 1966, when the orders were entered on the mandate.

II.

Even if this Court considers more than the limited record reviewed by the Illinois Supreme Court, there are cogent reasons why there is no jurisdiction to review this case by appeal or certiorari.

A. Former Decision of This Court Passed Upon the Jurisdictional Questions Here Presented.

Appellees are of the opinion that there are reasonable grounds to assume that the 1965 appeals to this Court (Docket No. 1046) were dismissed on the lack of merit of the jurisdictional grounds asserted rather than want of finality. The only court action which has occurred since is the dismissal by the Illinois Supreme Court of appellant's ill advised appeals from the judgments entered on the mandate. Thus the grounds for jurisdiction considered by this Court on the former appeal raised the identical jurisdictional questions presented in appellant's latest Jurisdictional Statement, although cast in

somewhat different language. Consequently this is an improper attempt by appellant to have this Court again review the jurisdictional issues already decided. This appeal should be dismissed and certiorari denied without further consideration of these questions.

B. The Equal Protection and Due Process Clauses of the Fourteenth Amendment Do Not Protect the State or Any of Its Arms.

The appellant here is "People of the State of Illinois, Ex Rel. John Maeras, Treasurer and Ex Officio Collector of Taxes of Madison County, Illinois," as is required by Illinois law. Under the law of Illinois, the County Treasurer as such Ex Officio Collector is charged with the responsibility of annually collecting property taxes. The State is deemed to be a real party in interest, adversary to the taxpayer, in a proceeding such as this. People Ex Rel. Murray v. City of St. Louis, 297 Ill. 199, 202.

In the instant case, the appellant, whether that word be deemed to be the State or the County Collector, asserts as against the railroad taxpayers, who are appellees, that the action of the Department of Revenue in using a judgment factor in arriving at the full value of the respective railroad properties, and the action of the Supreme Court of Illinois in approving the use of a judgment factor by said Department, has deprived the State of Illinois or the County Collector, or both, of due process of law and equal protection of law under the Fourteenth Amendment.

We thus have one arm or branch of the State asserting that another arm or branch of the State, namely the Department of Revenue and the Supreme Court of Illinois, by their actions violate said Amendment. The Fourteenth Amendment by its terms protects persons within the jurisdiction of the State from state action which violates due process and equal protection of the

law. Neither the State, nor the Collector of Taxes is a person within the protection of the Fourteenth Amendment. Columbus & Greenville Railway Co. v. Miller, 283 U. S. 96, 100, 75 L. ed. 861, 865, 51 S. Ct. 39 (1931); Risty v. City of Sioux Falls, 270 U. S. 378, 390, 70 L. ed. 641, 651, 46 S. Ct. 236 (1926); Trenton v. New Jersey, 262 U. S. 182, 192, 67 L. ed. 937, 943, 43 S. Ct. 534 (1923); Newark v. New Jersey, 262 U. S. 192, 196, 67 L. ed. 943, 946, 43 S. Ct. 539 (1923); South Carolina v. Katzenbach, 383 U. S. 301, 323, 15 L. ed. 2d 769, 784, 86 S. Ct. 803 (1966); Cranford County v. City of New York, 38 F. 2d 52, 55 (1930); Wisconsin v. Zimmerman, 205 F. S. 673 (1962).

C. The Alleged Violations of the Fourteenth Amendment Create No Discrimination Against Appellant.

Appellant's Jurisdictional Statement states that the questions presented are violations of the equal protection and due process clauses of the Fourteenth Amendment because of disparate methods of valuation as between railroad and non-railroad property **whereby a discriminatory share of the property tax is shifted from railroad to non-railroad taxpayers.** It is the locally assessed taxpayers against whom the discrimination is alleged to exist, and they are not parties to and do not prosecute this appeal. The People and the tax collector allege no discrimination against themselves because there is none. Only the persons aggrieved by an alleged violation of the Fourteenth Amendment are entitled to claim its protection. Columbus v. Greenville Railway Co. v. Miller, 283 U. S. 96, 100, 75 L. ed. 861, 865, 51 S. Ct. 39 (1931); Clark v. Kansas City, Kansas, 176 U. S. 114, 118, 44 L. ed. 392, 396, 20 S. Ct. 284 (1900); Roberts & Schaefer & Co. v. Emmerson, 271 U. S. 50, 54, 70 L. ed. 827, 833, 46 S. Ct. 375 (1926); Tileston v. Ullman, 318 U. S. 44, 46, 87 L. ed. 603, 604, 63 S. Ct. 493 (1943).

D. The Appellant's Right of Review on Direct Appeal Is Foreclosed by Failure to Make a Timely Presentation of the Constitutional Grounds Before the Supreme Court of Illinois.

The appellant here contended in the two briefs filed in the Supreme Court of Illinois prior to its 1965 decision that a determination by the Supreme Court that the railroad assessments were at full value would violate the uniformity clause of the Illinois Constitution. Casual reference was made to the equal protection and due process clauses of the U. S. Constitution; however not one decision of this Court was cited in relation to the Fourteenth Amendment. Despite appellant's assertion to the contrary in its Jurisdictional Statement, in neither of these briefs was the point raised that a determination by the Supreme Court that the railroad properties were assessed at full value would result in construing the uniformity clause of the Illinois Constitution in a manner to bring it in conflict with the Fourteenth Amendment. It was not until the Supreme Court of Illinois rendered its decision that the appellant for the first time in its petition for rehearing raised this question. This question raised for the first time in the petition for rehearing is not timely and is insufficient to confer jurisdiction on this Court to review the case on direct appeal. Charleston Federal Savings & Loan Assn. v. Alderson, 324 U. S. 182, 185, 89 L. ed. 857, 860, 65 S. Ct. 624 (1945); American Surety Co. v. Baldwin, 287 U. S. 156, 163, 77 L. ed. 231, 236, 53 S. Ct. 98 (1932); Bushnell v. Crook Mining & Smelting Co., 148 U. S. 682, 37 L. ed. 610, 613 (1893); Loeber v. Schroeder, 149 U. S. 580, 584, 37 L. ed. 856, 859, 13 S. Ct. 934.

E. No Question Respecting the Constitutionality of a State Statute Is Involved.

As stated in Appellant's Jurisdictional Statement, these appeals merely question whether the uniformity clause in Article IX, Section 1 of the Illinois Constitution, or the statutes of Illinois, **as interpreted and applied** in this cause by the Supreme Court of Illinois, are repugnant to the equal protection and due process clauses of the Fourteenth Amendment, and whether the Supreme Court of Illinois violated the equal protection and due process clauses of the Fourteenth Amendment by ordering property tax refunds as a result of such interpretation and application of Illinois law. No claim is made by Appellant that the state laws *per se* are repugnant to the Constitution or laws of the United States. Thus no grounds exist for direct appeal to this Court under section 1257 (2) of the Judicial Code of 1948 [28 U. S. C. A., Sec. 1257 (2)]. Charleston Federal Savings & Loan Assn. v. Alderson, 324 U. S. 182, 185; 89 L. ed. 857, 860; 65 S. Ct. 624 (1945).

F. No Substantial Federal Question Is Involved.

The appellant raises only an evidentiary question.

Despite the fact that the record, exhibits and briefs in the prior cases were voluminous, there was but one issue on which the Illinois Supreme Court was required to pass on the first appeal:

> "The only issue, therefore, is whether the railroads' properties were assessed at full, fair, cash value for the years in question. This should involve only a question of fact to be viewed in the light of the law as developed and crystallized through a succession of these cases." (People ex rel. Musso v. CB&Q RR. Co., 33 Ill. 2d 88, 90.)

The appellant's jurisdictional questions are founded on the premise that there was arbitrary action of the Su-

preme Court of Illinois in (a) judicially determining the valuation of non-railroad property in a manner which reflects post-World War II inflation while (b) ignoring such inflation in the valuation of railroad property. The determination of value of all property is essentially a question of fact. It is thus inherent in the questions presented that appellant contends that the Supreme Court determined the value of railroad and non-railroad property and that there is a complete lack of evidentiary support in the record for the determination so made. The appellant completely distorts the Illinois Supreme Court's decision. It did not find the value of non-railroad property; that was done by the trial court, no one appealed from that determination, and the Supreme Court accepted that decision. As to railroad property, the Supreme Court only approved the method adopted by the Department of Revenue in valuing railroad property as one which would achieve substantially full value assessments of railroads. The use of judgment in the valuation of railroad property is repeatedly equated with the elimination or disregard of inflation. The mandatory use of inflated values in equalizing non-railroad property is equated with the official sales-assessment ratio studies.

It is axiomatic that if the record shows the findings were at the full fair cash values and had evidentiary support, the action was not arbitrary and there is here presented no federal question to support certiorari jurisdiction, and in the absence of creditable evidence to the contrary, the presumption of statutory compliance would provide adequate support to a finding of full value.

The appropriate procedures, methods and standards to be followed in determining railroad valuations for purposes of ad valorem taxation in Illinois are strictly State questions and the State Constitution and statute have assigned these functions under statutory guide lines to the Illinois Department of Revenue.

Whether the Department's findings of value in fact represented the full fair cash values of the subject railroad properties required by statute or whether through the use of spurious judgment such valuations were, in fact, reductions from full values are evidentiary questions which the Illinois Supreme Court was competent to decide with finality, unless there was neither presumption nor evidence to support the Court's decision. It is respectfully suggested that only if there is no evidence to support the findings and creditable evidence against them of a kind and quality sufficient to overcome the presumptions of statutory compliance, should this Court find that inequality or lack of due process is presented by this record.

The task of searching the record for and of analyzing and weighing conflicting competent evidence relating to the forty-six findings of taxable railroad valuations made by the Department upon which the 46 appealed judgment orders of the Illinois Supreme Court are based is not a federal, to say nothing of plenary, problem.

We further respectfully suggest that the record contains a great deal of creditable evidence directly and overwhelmingly establishing that the Department performed its function in good faith and assessed the railroads' properties at their full fair cash valuations.

The analysis of the evidence, contained in Appendices C, F and G, which follows this motion, clearly shows the railroads did not enjoy the benefits of any general inflation during the years of 1957 through 1962.

Appendix D shows the selling prices and the assessed valuations of six railroads which changed hands in the 1949-1961 era. Five of the roads were independent Class I, long-haul railroads. One was a belt line. In all but one of the transactions, the assessment exceeded the selling

price. In the single exception, the assessment was 99% of the selling price.

Appendix E shows the comparative influence given reproduction cost in the straight average formula which the Department used in its **approaches** to findings of taxable railroad valuation, between 1957 and 1962. Reproduction cost would have thus been given an influence under the formula in 1962 in the case of the C&NW of 74.8%, of the Pennsylvania of 75.31% and the New York Central of 72.25%. These percentage figures represent the number of dollars which would have been accorded the reproduction cost indicator of value in the valuation of the railroads if the formulaic **results**, which the trial Court adopted as the full fair cash value of the properties, were adopted. Graphs illustrating this absurd result from the rigid adherence to the formulaic approach in 1963 are also in the record (Objectors' Exhibits 104A and B, A. V. II, pp. 223, 224).

Appendix H is a table demonstrating that there existed no "hold the line" policy benefiting railroads. This analysis is predicated upon the exhibits of both parties, and the reflected analysis has not been questioned since its submission to the Illinois Supreme Court.

Appendices I and J are graphic portrayals of the fluctuating levels of assessment of all major Class 1 railroads from 1938-1962 and of each of the objecting railroads who here appear. The scale in every instance is that used in People's (Collector's) Exhibit No. 69 (A. V. II, p. 310).

'Part 1, Railroads, Transport Statistics in the United States,' for the year ending December 31, 1962, which appears as People's (Collector's) Exhibit 109, clearly indicates that the railroads did not participate in the benefits of the inflation during the subject period, because from 1952 to 1962—

1) Mileage owned and operated by all railroads declined from 222,508 to 215,090 and the mileage of Class I line-haul railroads declined from 212,838 to 205,216. (p. 3)

2) Freight carrying cars owned by Class I line haul railroads declined from 1,758,933 to 1,550,067 (p. 23). It may be noted that during this period, privately owned freight cars also declined from 274,472 to 269,475 (p. 22). In the Eastern District, which embraces most of Illinois, the decline was from 713,979 to 536,080. (p. 23)

3) In the same period, passenger train miles declined 30% (p. 24) and total passenger cars owned by railroads declined from 17,257 to 11,166. (p. 25)

4) As might be expected, traffic statistics were parallel or had an even greater decline. Total revenue passengers carried (thousands) declined from 469,537 to 311,739 and those carried one mile or more declined 48.97%, from 34,009,986 to 19,902,201. (p. 30)

5) Total freight tonnage (thousands), both carload and LCL, declined from 1,382,604 tons to 1,233,597 tons, only the products of agriculture showing an increase of 16,800 tons in the last year over first of the period. (p. 31). There were 19,826,704,266 freight train, loaded car miles operated in 1952 and only 17,013,664,254 in 1962. (p. 42)

It is obvious that whatever was happening to the remainder of the economy during this period in the general inflationary process following World War II, the railroads were not participants (Col. Exhs. 108 and 109). Had inflation affected railroad valuations, it would have been reflected in the market prices of stocks and bonds and capitalized income.

Cost Was Never Accepted as Reliable.

The People have predicated their entire case, both in the trial and Supreme Courts of Illinois and in this Court,

on the hypothesis that cost was a time-honored essential in an even-weighted 3-part equally weighted formula, both historically and under the provisions of the statute, and that by "judgment" only lately applied, cost has been practically eliminated. This is simply not the case. Not only does the statute not require its consideration in the evaluation process, but the Illinois Tax Commission in determining the procedures for the evaluation of railroads, evolved in the 1933-1937 era, and since followed by both the Commission and the Department, looked askance at reproduction cost as a reliable indicator of railroad value, while recognizing its usefulness in the allocation factor.[6]

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[6] The Commission stated in its 15th Annual Report covering the year 1933 as follows:

> "Primary emphasis, it is believed, should be given to earnings and stock and bond quotations in the valuation process. It is felt that these are a better reflection of the current market value of a railway than original cost. • • •
>
> "Up until the time when valuation appraisals were made by the Interstate Commerce Commission, few railroads had data on original costs. Now such information as they have is based on these appraisals, together with records of additions and betterments to date; **but even these records are far from satisfactory.**
>
> It is almost axiomatic that original costs are no measure of present values. The costs of reproduction have much more relation to actual values, **but if an operating railroad owns numerous useless facilities, the cost of reproduction is far from satisfactory. In an allocation factor in which mileage prorates and earnings data are employed, reproduction values seem to find a logical place. Their use for allocation purposes does not imply that they are being used for the purpose of determining the system values of the railroads in question. These values, as was explained above, are determined on the basis of earnings, stock quotations, and such weighting of physical appraisals as appears necessary to produce satisfactory valuations.** In allocation formulae, however, reproduction values give weight to the presence of facilities within a state." [Ill. Tax Com., 15th Ann. Rep. People's (Collector's) Exh. 34, A. V. II, pp. 281 and 282.]

In mentioning adjustments in the following years, changes in the RPCN (LD) was not mentioned. [Ill. Tax Com., 17 Ann. Rep. People's (Collector's) Exh. 36, A. V. II, p. 283.]

The Illinois Tax Commission itself sponsored the Railroad Assessment Act of 1937 (Collector's Exhibits 36, 37 and 38, A. V. II, pp. 283-291). This Act was incorporated in toto and without significant changes in Sections 80 to 87 of the 1939 Revenue Act and its provisions have from then been in force. There is included in the appendices to this brief the pertinent sections of the Illinois Constitution and the 1939 Revenue Act as in force since its adoption. The 1963 amendments to Sections 80 and 86 (App. D, Jur. St., p. A-50) have no present significance. The important thing is that Section 80 as it now appears and as contained in the 1937 Railroad Assessment Act shows that neither the Illinois Tax Commission nor the legislature considered reproduction cost as an indicator of railroad value which must be considered with income and market indicators, which the railroad assessor is required to consider. Cost is simply one of the items that may be looked at with the 5-year averages of capitalized income and stock and debt, and this was the decision in the **C&NW Valuation** case. (C&NW Ry. Co. v. Dept. of Revenue, 6 Ill. 2d 278.) Insofar as the provisions of the Act are concerned, the only required use of the reproduction cost, as annually reported by the railroad, together with much other information, is as a component of the formula by which the allocation factor is determined for the apportionment of income and stock and debt values (Chap. 120, § 565).

After the adoption of the 1937 Railroad Valuation Act, the Commission again noted that the reduced income and market indicators required a further adjustment of railroad valuations without mentioning cost.[7]

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[7] "Long-continued and increasingly aggravated financial difficulties of the railroad industry, reflected in lowered company earnings and in the market values for stocks and bonds, necessitated the reduction in the full values of their operating properties." [Pp. 15-16, 19th and 20th Annual Reports of the Illinois Tax Commission. People's (Collector's) Exh. 37, A VII, p. 285.]

The Commission for the first time in 1940 reported the technical revolution then well advanced in the transportation industry and the resulting economic obsolescence of railroad property as a result of the shift of large segments of railroad traffic to other new and expanding forms of transportation. The Commission then observed that it was

> "inevitable that the contraction in the physical plant, the precipitous falling off in earning capacity, and the disposition of investors to discount heavily the prospective earnings of the railroad industry should have made for a more rapid decline in railroad assessments than in the assessment of other types of property."

And discussing the effect of this revolution upon the assessment process, the Commission observed:

> "The elements that enter into the determination of the value of a particular property by an assessment agency are often difficult of analysis. Past earnings, the cost and condition of the property, the imputed value that the stock market places upon securities, general economic tendencies and the level of the previous year's assessment combine with the experience and individual knowledge of members of the Commission to affect their judgment. Mr. Justice Holmes has described the process by which valuations are arrived at: '. . . they express an intuition of experience which outruns analysis and sums up many unnamed, tangled impressions which may lie beneath the consciousness without losing their worth.' • • •
>
> "All through the process of determining an assessment the necessity for utilizing judgment arises, and in the final summary the 'tangled impressions' act directly upon the result. Formula assessments are not mechanical unless rules are developed to cover every possible contingency, a situation which is in-

capable of attainment." [21st and 22nd Annual Reports of the Illinois Tax Commission, People's (Collector's) Exhibit 38, A. V. II, 288, 289).]

Considering the use of judgment in the valuation of the operating property of a railroad this Court reached the same conclusion as the Illinois Tax Commission:

> "The ascertainment of the value of a railway system is not a matter of arithmetical calculation and is not governed by any fixed and definite rate. Facts of great variety and number, estimates that are exact and those that are approximations, forecasts based on probabilities and contingencies have bearing and properly may be taken into account to guide judgment in determining what is the money equivalent—the actual value—of the property."
>
> Rowley v. Chicago & N. W. R. Co., 293 U. S. 102, 109; Rehearing denied 293 U. S. 632.

It cannot be said, since their own exhibits are to the exact contrary, that the exercise of judgment by an assessor, considering exactly the things to which assessors Danis and Koncel testified they gave consideration, was arbitrary. Nor can it be contended that the recognition by the Illinois Supreme Court of the exercise of judgment as an appropriate lawful final step in the approach to the evaluation of a railroad was unsupported by substantial evidence.

The court did not mandate the following of inflationary trends.

The Department performed its equalization functions upon the facts disclosed by sales—assessment ratio studies. These official ratio studies reflected the level of assessments and equalized assessment of a given county for the year surveyed, and have been found by the Illinois Supreme Court to truly reflect the ratios of assessed and

equalized assessments to the full fair cash value and the opinions in **Hillison, Kohorst** and **Wenzel** describe how they are conducted and show them to be free from criticism as to method and to comply with the statute. No question was raised in the lower Courts as to the method of conducting the official ratio studies or their results, and the People accepted the findings of the trial Court that the levels of assessment for each of the subject years of locally assessed property, after equalization, were those found by the Department.

Undoubtedly, many properties surveyed did increase in value and the sellers participated in the benefits of inflation insofar as the sale prices of their properties were concerned. But, it does not follow that all other properties which sold were thus increased in value, and in any case, it is clear that if the inflated properties had achieved a higher taxable value as a result of the economic circumstances affecting their selling prices, there was nothing arbitrary in the giving of effect to the higher values measured by such sale prices in the equalization process, as the statute required, in determining the county wide level of assessment.[8] The department did not by this procedure mandate complete reliance upon inflated prices. Nor did these studies tend to show that railroads were increasing in value through the inflation which may have affected non-railroad property, and the record shows they did not participate.

Neither Was Railroad Property Arbitrarily Assessed.

Railroad property is centrally assessed by the Illinois Department of Revenue on the "unit" basis. A unit as-

[8] As to method of conducting the official ratio studies, see **Hillison**, 22 Ill. 2d pp. 96-8; **Kohorst**, 22 Ill. 2d pp. 109-111; **Wenzel**, 28 Ill. 2d pp. 212-16. For standards of value of locally assessed property, see Sections 501 and 502, Chapter 120, Annotated and Ill. Rev. Stat., App. B.

sessment is an evaluation of all the railroads' operating property, including funds involved in operations and all other operating personal property, and, in case of an interstate carrier, its apportionment between Illinois and the other situs states by the application of an Illinois allocation factor. In the approach to an assessment, this allocation factor is applied only to the statutory value indicators of income and market, which the Department is required to consider. These allocated amounts are, in themselves, guides to the assessment and as a further guide are averaged on a ⅓, ⅓, ⅓ basis with I. C. C. reproduced cost less depreciation of the Illinois property of the railroad, adjusted to eliminate uneconomic property and physical obsolescence. Economic obsolescence is not adjusted out of the reproduction cost factor before its use in the formula. The formulaic result is then considered with the statutory factors and with all other information available to the assessor, who then determines by the exercise of judgment based upon his experience what the taxable value, i. e., the assessment, of the railroad is for the subject year. Railroad assessors Danis and Koncel both testified unequivocally that the railroad assessments were at full fair cash value. The reduction from the formulaic result which usually results from the application of the judgment of the assessor is referred to as the "judgment factor". The valuation so determined is distributed by the Department on a pro-rated mileage basis to all of the Illinois taxing districts in which the railroads' operating property is located.

The Illinois Supreme Court has repeatedly found that the method pursued by the Department was not arbitrary and complied with the statute. It could scarcely do otherwise.[9]

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[9] Musso, 33 Ill. 2d 88, 97; Korzen, 32 Ill. 2d 554. In the exercise of his final judgment, the assessor anticipated the future, paid most attention to earnings, and considered economic

The Nature of the Case—Constructive Fraud.

The subject tax objections were based on the **Callahan** case.[10] Under **Callahan**, there resulted constructive fraud

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obsolescence and many other things, such as, the trends upward and downward of operating income and of stock and debt prices, some based upon observation and others, including current economic conditions. In Illinois, the income and market factors have always been considered more reliable than cost, either investment or reproduction. The principal guide of Raymond S. Danis, as railroad assessor for the years 1933-1960, inclusive, was the capitalized earnings of a railroad, which was historical. Danis' procedures were followed by his successor, railroad assessor Edward F. Koncel (1961-1962) (Danis A 1, pp. 222-3, 228-30, 407-12; Koncel, A 1, 425, 427-430, 433).

See **C&NW Ry. Co. v. Dept. of Revenue**, 6 Ill. 2d 278, 128 N. E. 2d 722; **CB&Q RR. Co. v. Dept. of Revenue**, 17 Ill. 2d 376, 161 N. E. 2d 838. And see People's (Collector's) Exhibit 34, A. V. II, pp. 281-2 and 1959 testimony of Raymond S. Danis in previous Madison County tax cases. He was then railroad assessor and a witness for the People, A. V. I, pp. 402-415. Danis testified again in Lee County in 1960 while the incumbent assessor, as adverse witness to the railroads, A. V. I, pp. 281-291. After retirement, Danis was a witness in this case, A. V. I, pp. 218-235. Edward F. Koncel testified as Court's witness in the case while the incumbent railroad assessor, A. V. I, pp. 415-441.

[10] **People ex rel. Callahan v. GM&O RR. Co.**, 8 Ill. 2d 66, was the first tax objection case considered by any Illinois Court after the effective date (1-1-46) of the full value (Butler) Reform Legislation of 1945. In this case the GM&O objected to 45% of the taxes levied upon its property in Madison County for the year 1951 claiming it had been assessed at full fair cash value as the statute required while other property subjected to the same taxes in Madison County had been assessed that year at not to exceed 55% of full fair cash value as the law required. The railroad sought to be refunded the difference between the amount of tax extended against its property and what the tax would have been had the tax base included locally assessed property at 100% of the full statutory standard. This was in effect a new remedy and based upon the statute as amended in 1945. The Illinois Supreme Court held the objection to be appropriate, but the particular form to be technically objectionable. Subsequently, other similar objections to taxes levied for the years 1952-1957, inclusive, in Madison County were amended or pleaded to meet the technical objection of the Court in **Callahan**, and were consolidated and tried, vigorously and comprehensively, over a 16 months period. These objections were sustained and the final orders, all in similar form, were entered on November 3, 1959. (See Objectors' Exhibits 46, 46A-E, A. V. II, pp. 143-159.)

as a matter of Illinois law, without regard to any provision of the Illinois or federal Constitutions. It evolved as a remedy for the beleaguered taxpayer to whom the 1945 full valuation reform legislation had been faithfully applied while other taxpayers had not been similarly affected. From these facts constructive fraud was irrebutably presumed.

It is significant that in none of the cases in which relief was granted upon the basis of **Callahan** does the Court find that, by the relief granted, it is achieving uniformity under the Constitution of Illinois or due process or equal protection under the 14th Amendment.

In the **Burlington Valuation** case, 17 Ill. 2d 376, the railroad sought to compel the Department to exercise its constitutional duty to secure uniformity in the assessment and equalization of the 1957 assessment of the railroad. The Supreme Court held that "with the enactment of the Butler amendments to the Revenue Act in 1945, the General Assembly required that all valuations upon which tax rates are extended must be at full, fair cash value. It is the duty of the Department to carry out the statutory mandate". The Court then referred the railroad to **Callahan** as providing an appropriate remedy for the recovery of any excess taxation due to the gross discrimination complained of by the railroad.

While several of the Objectors linked their rights to relief under **Callahan** with their right to be protected by the 14th Amendment and uniformity clause of the State Constitution, the facts alleged and the relief prayed in every instance were the same in substance as the Illinois Supreme Court had approved in **Callahan**. The railroads in all proceedings in the trial Court and on appeal proceeded upon the simple issue of constructive fraud. (A. V. I., pp. 4-7, 47-8, 66-7, 71.)

It follows that, so far as the remedy is concerned, this case does not draw in question the validity of any Illinois statute on the grounds of its being repugnant to the Constitution, nor does the remedy involve a single substantial federal question. It is entirely and adequately based upon well-settled non-federal grounds, namely, the provisions of the 1939 Revenue Act of the State of Illinois, as amended in 1945, requiring the assessment and equalization of railroad and of all other property at full fair cash value, and specifying the means for equalizing locally assessed property at that value, and the subsequent violation of the statute in the assessment and equalization of locally assessed property at less than 50% of statutory standard, and the resultant constructive fraud.

Public Importance Is Greatly Exaggerated.

While it is true that during the period from 1957 to 1962, all railroads operating in Illinois made objections similar to those here involved, there have been practically no objections of this sort made since 1962. In 1963, the legislature in Illinois, realizing the plight of the railroads, amended the Revenue Code, Par. 561, Chap. 120 (see Appendix B), to provide that for assessment purposes, the fair cash value of the railroads' property as determined by the Department should be equalized with locally assessed property by a factor which is the state-wide average ratio of the equalized assessed value of locally assessed property to the full fair cash value of such locally assessed property. This ratio since 1962 had been approximately 50% with the result that the railroads' valuations for tax purposes have been reduced by 50%. Thus the lack of equalization which was the basis of objections has been remedied and the discrimination which formerly existed has disappeared.

CONCLUSION.

Wherefore, appellees in this Court for the reasons assigned herein respectfully pray that these appeals be dismissed or that the judgments of the Supreme Court of Illinois be affirmed and that the petition for writ of certiorari be denied.

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APPENDIX

APPENDIX

APPENDIX A.

Opinions of Illinois Supreme Court in Earlier and Concurrent Companion Cases.

Callahan. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Company,* 8 Ill. 2d 66, 132 N. E. 2d 544.

This was the initial tax objection case following the Butler Full valuation reform legislation of 1945, and was based upon the full valuation of railroad property by the Department, absent the power of equalization to reduce railroad full value assessments to assessment levels of locally assessed property. The railroad appealed from an order striking the objection based upon the discrimination under the statute between the full value assessment of railroad and a less than 55% level of assessment of locally assessed property. The right to the remedy was questioned by the People.

> "The parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value (Ill. Rev. Stat. 1951, chap. 120, pars. 501, 502). By its stricken objections, appellant, whose property was assessed at State level along with other railroads, alleged that its own property has been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally under valued at less than full, fair cash value. * * *. Appellant objected against paying taxes on rates higher than would have been developed if locally assessed property had been at one hundred percent full, fair cash value in the taxing formula by which rates were computed. Translated into figures, it is appellant's contention that because locally assessed property was fraudulently and intentionally valued at less than full, fair cash value, the resulting increase in rates caused its tax bill of $45,017.81 to be excessive by $18,578.38.
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> "Some question is raised as to whether appellant, who admits that its own property was correctly assessed, has pursued the proper remedy. We find, however, that this court has observed on several occasions that since valuations must be the result of honest judgment and not of mere will, it follows that an assessment may be impeached both when fraudulently

made at too high a rate, and when fraudulently made at too low a rate.' (*People's Gas Light and Coke Co. v. Stuckart*, 286 Ill. 164, 174; *Chicago, Burlington & Quincy Railroad Co. v. Cole*, 75 Ill. 591, 594.) Further, in a long line of cases, it has been held that the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes. (See: *People ex rel. Ross v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 381 Ill. 58, 61, and cases there cited.) Here the essence of appellant's objections is that there was a fraudulent discrimination resulting from the undervaluation of locally assessed property which had the effect of denying appellant equal protection of the Revenue Act, and of subjecting it to taxation lacking in both constitutional and statutory uniformity. We conclude that a proper remedy has been pursued" (pp. 67-69).

C&NW 1953 Valuation Case. *C&NW Ry. Co. v. Dept. of Revenue*, 6 Ill. 2d 278, 128 N. E. 2d 722, Certiorari denied 351 U. S. 950. Rehearing denied 352 U. S. 859.

In this case, the railroad contended that its assessed valuation exceeded the full fair cash value of its property, and complained of the use of reproduction cost in the formula and the use of judgment in reducing the formulaic result by a smaller percentage in its valuation than in the valuation of 41 other railroads, since the basis of the judgment reduction was not disclosed, although the railroad had sought such disclosure in the examination of the railroad assessor, Raymond S. Danis.

"Plaintiff also appears to suggest that a discrimination has occurred with respect to the Department's practice in setting its final assessment at a figure which is lower than the figure produced by its formula. In plaintiff's case there was a reduction of $10,980,000, about 11 per cent. Forty-one of the other railroads received reductions which were larger percentagewise. The remaining lines received smaller reductions. The record does not disclose the basis for these reductions, either in plaintiff's case or in the case of other railroads. A difference not shown to be the result of caprice or intentional discrimination is not enough to invalidate the assessment. (*Cf. Department of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 488.) Plaintiff points out that as a result of the various reductions the final assessment of thirty-seven of the lines is a figure approximately equal to, or less than, the figure which would have been obtained had the Department ignored reproduction cost in its formula. The implication, which is not

expressly drawn by plaintiff, is that the Department, under the guise of making a reduction in assessments has in fact applied to railroads other than the plaintiff a formula based only on capitalized earnings and security prices. From what we have already said it is clear that this charge must be rejected. It is unsubstantiated in the record before us, and the reductions made by the Department may well rest on reasonable, though undisclosed grounds" (pp. 289-290).

Burlington 1957 Valuation Case. ***CB&Q RR. Co. v. Dept. of Revenue,*** **17 Ill. 2d 376, 161 N. E. 2d 838. The formulaic average had been reduced from $195,183,000 to $147,000,000, which the railroad contended was excessive. The Burlington contended that the Department should equalize this valuation further to conform to the state-wide average level of assessment of locally assessed property.**

"Plaintiff is an interstate railroad operating in 12 States. In determining the 1957 assessed value of its Illinois operating property, the Department took into account: (1) the capitalized value of the average of net system railway operating income for the past five years; (2) the market value of stock and debt, using a five-year average; (3) the cost of reproduction less depreciation of physical property located in Illinois. An allocation fraction was then applied to the first two items to determine the portion of the total system value represented by Illinois assets, and a judgment factor was used which substantially reduced the average of the three items. This method of valuing railroad operating property is used in assessing all railroads in Illinois, and it complies with the statutory requirements. *Chicago and North Western Railway Co. v. Department of Revenue,* 6 Ill. 2d 278" (p. 379).

Pointing out that the 1945 Butler Reform Legislation had terminated the previous authority and duty of the Department to equalize and thus secure uniformity under Sec. 1, Art. IX, of the State Constitution (or equal protection and due process under the State and Federal Constitutions), the Court found that the Department could not assess or equalize railroad property at less than the statutory standard of full fair cash value, and confirmed the remedy of tax objection to meet the alleged discrimination as approved in Callahan.

"What the court referred to as the "recognized custom" of the State Board of Equalization and the Tax Commission

in prior years, to debase or equalize assessed valuations of railroad operating property below full value in order to achieve uniformity with local assessments, is no longer permissible under the Revenue Act. Compare Ill. Rev. Stat. 1937, chap. 120, par. 56.8, in effect when *Mobile and Ohio Railroad Co. v. Tax Commission*, 374 Ill. 75, was written, with Ill. Rev. Stat. 1955, chap. 120, par. 567. With the enactment of the Butler amendments to the Revenue Act in 1945, the General Assembly required that all valuations upon tax rates are extended must be at full, fair cash value. It is the duty of the Department of Revenue to carry out the statutory mandate. Assessments made by the Department must be at full value (Ill. Rev. Stat. 1955, chap. 120, pars. 502, 561) and local assessments must be equalized by the Department to full value by increasing or reducing the aggregate assessed valuations made in the several counties. Ill. Rev. Stat. 1955, pars. 627, 630.

"The Department, however, refused to consider the plaintiff's evidence on the ground that the hearing requested by the plaintiff was concerned with the Department's duty to assess the value of railroad operating property and not with its duty to equalize local assessments throughout the State to full value. We think the Department was correct. It has no authority to reduce its assessed valuation of the plaintiff's property to less than full value. And the time sequence prescribed by the Revenue Act for local assessment of property makes it unlikely that the various county equalization factors will have been determined at the time the Department is valuing railroad property. (Cf. Ill. Rev. Stat. 1955, chap. 120, pars. 581, 588, 591, 592, 609, 627, 629a; *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120.) But appropriate remedies are available if the plaintiff's property is in fact bearing a disproportionate share of the tax burden in some taxing districts. Plaintiff may petition the Department for a reconsideration of the equalization multiplier certified to a county clerk for application to local assessments. (Ill. Rev. Stat. 1955, chap. 120, par. 629a.) And such an objection may also be raised to a county collector's application for judgment and order of sale of its real estate. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Co.*, 8 Ill. 2d 66" (pp. 390-391).

Hillison. ***People ex rel. Hillison v. CB&Q RR. Co.,*** **22 Ill. 2d 88, 174 N. E. 2d 175.**

The Burlington here objected to 1958 taxes in Lee County, Illinois. Counsel for the People assisting the State's Attorney was the attorney for the State Department of Revenue and also an Assistant Attorney General. Here the railroad pursued on its 1958 taxes the remedy of

Callahan to which it had been referred by the Illinois Supreme Court in its 1957 valuation case, 17 Ill. 2d 391. The People contended that neither the uniformity clause nor the due process or equal protection provisions of the State and Federal Constitutions applied to require equity on the level of assessments, since railroad property could be properly assessed and taxed as a separate class, also, that, since the Department had, through judgment, debased its equalization factor to produce a level of assessment of less than 55% of full value for locally assessed property, the Court should assume that the reduction resulting from the use of judgment in the valuation of railroad property similarly produced a debased assessment from full value. The Court held that the discrimination complained of was founded upon the Illinois Revenue Act, as amended in 1945, and not on Constitutional grounds.

> "Before dealing with the main substantive question, it is necessary to dispose of one further argument of plaintiff. Plaintiff, relying on certain language in *People ex rel. Prindable v. Union Electric Co.*, 392 Ill. 271, argues that the constitution does not require railroad property to be assessed and taxed uniformly with other property, but that railroad property is a separate class, and that all that the constitution requires is uniformity within the class. Whether the legislature might constitutionally have provided for the assessment of railroad property at its full value while other property is assessed at only 55% of full value is not before us. The legislature has not so provided. The statute requires all property to be assessed at its full value, and the trial court found that the Department has failed to comply with the statute. It remains to be considered whether the findings of the trial court are supported by the evidence. * * * (p. 96).
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> "The record shows that the Department, in assessing defendant's railroad property, initially computed the average of three factors which this court has upheld as properly bearing on the valuation of railroad property. (*Chicago and North Western Railway Co. v. Department of Revennue*, 6 Ill. 2d 278). These three factors are (1) capitalized value of earnings, (2) market value of stock and debt, and (3) reproduction cost, less depreciation, of the operating property located in Illinois. The average of these factors resulted in an initial figure of $205,153,000. Thereafter, in the exercise of its "judgment factor," the Department arrived at an assessment of $147,000,000 for defendant's railroad property for 1958. Plain-

tiff argues, in effect, that if the ratio studies of the Department are to be accepted as indicating that locally assessed property was equalized at no more than 55% of full value, then the average figure of $205,153,000 should be accepted as the actual value of defendant's property, so that the final assessment of defendant's property at $147,000,000 represented only about 73% of its full value.

"This argument has considerable surface appeal, but we cannot agree with it as applied to the particular situation. In considering both the assessment of railroad property and the equalization of other property there is an initial presumption that the Department complied with its statutory duty. Therefore, in the absence of evidence to the contrary, it will be presumed both that defendant's property was assessed at full value and that locally assessed property was equalized at full value. In the case of the locally assessed property the evidence presented by the defendant, including the ratio studies of the Department, was deemed sufficient by the trial court to overcome the *prima facie* presumption. No evidence was introduced by plaintiff. The trial court therefore found that locally assessed property was equalized by the Department at not more than 55% of full value. We believe the trial court was warranted in so finding (99-100).

"The valuation of railroad property poses a different problem. Here the concept of market value has little practical application. Since railroads are not bought and sold on the market, the legislature has provided that their fair cash value shall be determined by the Department of Revenue (Ill. Rev. Stat. 1957, chap. 120, par. 561), and reasonable discretion must be given to the Department in performing this task. The complex questions involved in assessing railroads have been the subject of recent litigation in this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) We have approved the use by the Department of a consideration among other things of the three factors of (1) capitalized value of earnings, (2) market value of stock and debts, and (3) reproduction cost, less depreciation. The fact that these have been recognized as factors which may properly be considered by the Department in assessing railroad property, however, does not mean that the average of these three factors or any other formula making use of them will necessarily equal or will be presumed to be the same as their actual value. Since there is no presumption that the average of these factors, or $205,153,000, was the actual value of defendant's property, the fact that the Department finally assessed defendant's property at a lesser figure does not indicate that the property was assessed at less than its full value and does not overcome the presumption that the Department properly assessed defendant's property at its full value" (pp. 101-102).

Kohorst. *People ex rel. Kohorst v. GM&O RR. Co., and C&NW Ry. Co.*, 22 Ill. 2d 104, 174 N. E. 2d 182.

The GM&O and C&NW railroads here appealed the decision of the Sangamon County Court overruling their objections to 1957 taxes based on **Callahan.** The case was submitted concurrently with **Hillison** and was decided on the same day. The availability of the remedy was under direct attack by the cross appeal of the People. The Court held the remedy to be based upon the Illinois statute, as amended in 1945, not the conformity or equal protection or due process guarantees, and rejected any implication of the debased value of the railroad property because of "judgment" in the Department's assessments of the complaining railroads.

> "We are fully aware that relief by way of tax objection is a cumbersome and ponderous process. Nevertheless, it is a legal remedy available to objectors and they have seen fit to pursue it. We now turn to the question of whether they have sustained the burden of proving gross discrimination amounting to constructive fraud.
>
> "In order to establish their case objectors must show the level at which their property and that of locally assessed property was assessed, and that the difference was grossly discriminatory and hence constructively fraudulent. We will first consider the assessment of the railroads' properties.
>
> "It is the duty of the Department of revenue to assess all railroad property, other than noncarrier real estate, at its fair, cash value (Ill. Rev. Stat. 1957, chap. 120, par. 561) and the several factors used by the Department to determine such value have been approved by this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) The official reports of the Department state that objectors' properties were assessed at full, fair cash value, as do letters certifying the assessed values for the period of 1945 to 1957. There is a presumption of statutory compliance, and the testimony of Raymond S. Danis, railroad assessor of the Department, verifies the full valuation. There is no evidence in the record to overcome the presumption and proof, and we must conclude that objectors' property was assessed at 100%. * * * (p. 109).
>
> "In deciding the level to be used it must be borne in mind that this is not a case of equalization but is the seeking of a formula to provide a refund of discriminatory taxes" (p. 113).

Wenzel. *People ex rel. Wenzel v. C&NW Ry. Co.*, 28 Ill. 2d 205, 190 N. E. 2d 780.

The C&NW here pursued the remedy of **Callahan** in objecting to its 1956-1959 taxes in Macoupin County, Illinois. Here, although the railroad's valuations were attacked in the lower Court, the People conceded full valuation of railroad property in the Supreme Court and contested the procedures of the Department in the making of sales-assessment ratio studies. The Court held that the State itself was a nominal and interested party to the proceeding and could not be excused from a failure to produce any evidence in its files bearing upon the issue before the Court and rejected criticism of methods used by the Department performing its statutory functions.

> "We recognize that most courts, as a condition for such exception, require that the mass of documents thus summarily received in evidence be placed in the hands of the court, or at least be made accessible to the opposing party in order that the correctness of the evidence may be tested by such inspection as is desired. (4 Wigmore on Evidence, 3rd ed., sec. 1230.) This condition was met here, particularly when we consider that the State, which is both the nominal and an interested party in tax objection proceedings, (*People ex rel. Murray v. City of St. Louis*, 297 Ill. 199, 201-202,) has at all times had the mass and volume evidence at its disposal. * * * (p. 213).
>
> "At best the evidence shows two accepted methods by which the ratio between full and assessed value may be determined, each with its advantages and each with its disadvantages, and it is the decided weight of the evidence in this record that the sales-assessment method is the most widely accepted and used. Our statute requires only that the Department use such means as it deems 'proper and reasonable' to make its studies on assessed valuations, and a mere difference in opinion as to what is the best or most reasonable method is not sufficient to bring the matter within the range of judicial review. (Cf. *Schreiber v. County of Cook*, 388 Ill. 297, 311)" (p. 216).

Enrietta. *People ex rel. Enrietta v. GM&O RR. Co.*, 29 Ill. 2d 605, 195 N. E. 2d 174.

In this case, the GM&O pursued the remedy of **Callahan** in objecting to the 1958 discriminatory taxation of its

property in Grundy County, Illinois. The People contested the full valuation assessment of the railroad on the basis of the testimony of two expert witnesses, each of whom pursued a different formula from that of the department and who also differed between themselves. Each gave the cost factor less than ⅓ weight and characterized the Illinois ⅓, ⅓, ⅓ formula as archaic, and neither applied judgment to his formulaic result. All of the official documentary evidence before the Court in the instant case on railroad valuations, except the datum sheets of other railroads and for other years and the reports of the Illinois Tax Commission, prior to 1939, was present in **Enrietta.**

> "Raymond S. Danis, railroad assessor superintendent of the Department until his retirement on November 15, 1960, has been in railroad valuation work since 1927. As such assessor he assembled all data and prepared his opinion of value. He testified that several factors have been used for more than 30 years in the assessment of railroad property in Illinois, including a judgment factor, but that the primary one is capitalized income. The various factors made up a formula to which the judgment factor was then applied, but he emphasized that the formulaic result did not represent assessment value, and was a guide to be used for comparison purposes. Danis testified unequivocally that in his judgment the assessment of $49,700,000 represented the full, fair cash value of the objector's property in Illinois for 1959.
>
> "James R. Pollack, a city engineer and city manager prior to 1952, was called by the collector. * * * Martin D. Miller, an engineer and appraiser who is a partner in a consulting firm, was also called. * * * (p. 607). Each of these witnesses considered the Illinois system archaic and not adapted to modern conditions, but were not in agreement as to a proper formula to be used. * * * Neither applied a judgment factor and both indicated that the Department's application of that factor constituted debasement and equalization. * * *
>
> "A careful review of the entire record leads to the inevitable conclusion that judgment must be used by appraisers in the intricate problem of arriving at an assessed valuation of a railroad, whether it be by using various factors, then applying the judgment factor as is done in Illinois, or the choosing of a percentage for capitalizing net operating income and the fixing of the percentage weight to be given the reproduction cost factor.
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> "The Department has chosen a method to carry out the statutory mandate and has used it for many years. That

method has received the tacit approval of this court in a number of cases. (See *Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376; *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.*, 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill. 2d 104.) This attack by the collector upon the method of valuation used by the Department charged with that duty by the State falls short of overcoming the presumption. We are of the opinion that the record bears out the Department's valuation as being the full, fair cash value of the objector's Illinois property" (pp. 608-609).

Korzen. *People ex rel. Korzen v. CB&Q RR. Co.*, 32 Ill. 2d 554, 209 N. E. 2d 649.

The Burlington here objected to 1957 taxes in Cook County, Illinois and pursued the remedy in **Callahan.** The evidence offered by the People in **Korzen** including annual reports to the Illinois Tax Commission and the Department of Revenue, datum sheets, graphs, questionable, suppositious railroad sales-assessment ratio studies and the prior testimony of Danis in **Hillison** was imported to Madison County and admitted in the subject cases. Except for some railroad data originating with the I. C. C. and the testimony of the witnesses Stiles and Hulman, and exhibits relating to their testimony, the People's evidence in **Korzen** and **Musso** (the instant case), is practically identical. **Korzen** was submitted and considered at the same term of the Illinois Supreme Court as **Musso** and the opinion in each case refers to the other. In **Musso** there was offered by the railroads and considered as admissions against interest the much earlier testimony of Danis appearing as railroad assessor and testifying on behalf of the People as admissions against interest at the trial of six GM&O valuation tax objections for the years 1952-1957 in Madison County. In **Korzen**, an association of school boards was permitted to file briefs as *amici curiae* to urge that the Court re-examine the principles announced in the above cited precedent cases, because of

the claimed financial impact of a reversal of the Cook County decision.

"In addition to the documentary evidence, the objector offered the evidence deposition of Raymond S. Danis, former Supervisor of Railroad Assessment, and Railroad Assessment Supervisor from 1948 to 1960, retired, who was not living at the time this case was heard. He prepared the data sheets upon which was computed a 5-year average of income capitalized at 6%, a 5-year average of market value of stock and debt less nonoperating properties, and the cost of reproduction depreciated of the Illinois property, as furnished by the Interstate Commerce Commission. The system factors of capital and market value were then allocated to Illinois and the Illinois costs of reproduction depreciated were added and the straight average of the three was determined. The straight average was not the assessment and neither was any of the three indicators considered alone. He used the average as a guide and applied his judgment to produce a recommended assessment value to the Director. His recommendations were usually followed. In the event the carrier protested and asked for a hearing, he and the Director would hear the protest and come to a conclusion. He cited as an example the Burlington's 1957 assessment which he fixed at $147,100,000 and following a hearing the Director reduced it to $147,000,000. Danis unequivocally stated that the resultant final assessment was the full fair cash value of 100%, and that there was no attempt to equalize such assessments with locally assessed property.

"At this point we think it appropriate to consider the Collector's attempt to impeach Danis by showing that his testimony in the Lee County *Hillison* case in 1960 was inconsistent with his evidence deposition given in this case in 1962 shortly before his death. His testimony in that case was introduced here. The Collector asserts that it indicated that another factor taken into consideration in arriving at the final assessment was a desire of the Department for continuity of assessments. Not a question was asked of the witness to lay a foundation for impeachment, and his death prevents an explanation. Under such circumstances the impeachment evidence is inadmissible. *Cf. People v. Moses,* 11 Ill. 2d 84; *Ayers v. Watson,* 132 U. S. 394, 33 L. ed. 378, 10 S. Ct. 116.

"This court has given specific approval to the factors used by the Department of Revenue to arrive at railroad valuations in *Hillison, Enrietta* and other cases. And where the Department assesses a railroad's operating property in accordance with the recognized and approved factors, it will be presumed to have been assessed at full value as required by statute. *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.,* 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.,* 22 Ill. 2d 104.

"We are aware of the impact of an adverse holding on the interested taxing bodies but, as readily recognized by *amici*

curiae, our decision cannot be based upon their financial needs. *Amici* argues 'the great improbability of accuracy here of presumptions traditionally indulged with respect to the acts of public officials and the contents of public records.' Nevertheless, such a presumption has an important role in our jurisprudence and cannot be ignored. Here, there is no competent evidence to overcome the presumption and, in fact, it is supported by Raymond L. Danis, an expert in this field, who prepared the assessment on behalf of the people through the Department of Revenue."

APPENDIX B.

Applicable Provisions—Illinois Constitution and 1939 Revenue Act.

Constitution of Illinois 1870.

ARTICLE IX.

Revenue.

"§ 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—*such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise;* * * * (Emphasis added), 1965 Ill. Rev. Stat., p. 21.

Revenue Act of 1939 as enacted and in force 1957-1962, incl. Chap. 120, Anno. Stat., or Rev. Stat. of 1961.

RULES FOR VALUING TAXABLE PROPERTY.

§ 501. Valuation of real property

Real property shall be valued as follows:

(1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(2) Each taxable leasehold estate shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(3) Each building or structure which is located on the right of way of any canal, railroad or other company leased or granted to another company or person for a term of years, shall be valued at its fair cash value, estimated at the price such building or structure and lease or grant would bring at a fair, voluntary sale.

(4) Any real property on which there is a coal or other mine, or stone or other quarry, shall be valued at its fair cash value, estimated at the price such property, including the mine or quarry, would bring at a fair, voluntary sale.

(5) In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property. (§ 20, as amended in 1945.)

(Subsequent Amendment of 1965 added par. (5) on public easements not relevant.)

§ 502. Valuation of personal property

Personal property shall be valued as follows:

(1) All personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * (§ 21).

Valuation of Railroad Property.

§ 561. Method of determining fair cash value

The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be non-carrier real estate as hereinabove defined.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate as hereinbefore defined; Provided that only so much of the intangible personality of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included. (§ 80, as amended in 1943 and in force prior to July 1, 1963.)

(As in force prior to equalization amendment of July 1, 1963.)

§ 561. Method of determining fair cash value and equalized assessed value

The Department shall assess all property owned or used by railroad companies operating within this State, as of April

first annually, except property found by the Department to be non-carrier real estate as hereinbefore defined.

In assessing the property of any railroad company, the Department shall first determine the fair cash value of such property.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate as hereinbefore defined: Provided that only so much of the intangible personalty of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included.

The Department shall determine the equalized assessed value of the property of every railroad company, other than non-carrier real estate, by applying to its determination of the fair cash value of such property of every railroad company an equalization factor, which factor shall be the statewide average ratio of the equalized assessed value of locally assessed property to the full, fair cash value of such locally assessed property. As amended 1963, Aug. 26, Laws 1963, p. 3422, § 1.

As amended July 1, 1963.

§ 563. Railroads' annual statement to Department of Revenue

In the month of April of each year every railroad company in this State shall return to the Department, in addition to any other information required by this Act, sworn statements or schedules as follows:

(1) The amount of capital stock authorized and the number of shares into which such capital stock is divided.

(2) The amount of capital stock issued and outstanding.

(3) The market value, or if no market value then the estimated value, of the shares of stock outstanding.

(4) The total amount of all bonds outstanding and all other indebtedness.

(5) The market value, or if no market value then the estimated value, of all bonds outstanding and all other indebtedness.

(6) A statement in detail of the entire gross receipts and net earnings of the company during the five calendar years next preceding the assessment date within this State, and of the entire system from all sources.

(7) The length of the first, second, third and other main tracks and all side tracks and turnouts showing the proportions within this State and elsewhere.

(8) The reproduction cost of the property within Illinois and the total reproduction cost of all property of such company. Said reproduction cost, so far as applicable, shall be as last determined by the United States Interstate Commerce Commission, or other competent authority, plus additions and betterments, less retirements and depreciation to the December 31, next preceding the assessment.

(9) An enumeration and classification of all rolling stock and car equipment owned or leased by the company filing the return. The classification shall show type of equipment and circumstances of ownership and use. The enumeration shall include rolling stock used over the track of other companies under any trackage right agreement. All other property used in connection with a trackage right agreement shall also be listed.

(10) Any other information the Department may require to determine the fair cash value of the property of any railroad company, or necessary to carry out the provisions of this Act.

Such statements or schedules shall be made in conformity to such instructions and forms as may be prescribed by the Department.

In cases where a railroad company shall use property owned by another, the return shall be made by the using company, and all property operated under one control shall be returned as hereinbefore provided. (§ 82, as amended in 1943.)

§ 565. Interstate allocation of operating property

If any railroad company owns or uses operating property partly within and partly without this State, the commission shall determine the value of the entire operating property of such railroad but shall take only that part of such entire value as is represented by the average percentage of (a) the length

of all track including main, second and additional main track, side track and turnouts within this State, (b) its gross revenues arising from railroad operations in this State, (c) the reproduction cost of its operating property within this State, as determined by the Interstate Commerce Commission of the United States, or other competent authority, plus additions and betterments, less retirements and depreciation. Provided nothing in this section shall be construed to preclude the use or substitution of such other factors or methods as may appear reasonable and necessary in determining for any railroad the proportion of its operating property or any part thereof within this State. (§ 84.)

§ 567. Distribution of assessments made by Department

The full fair cash value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceeding $1,000, which shall be deemed to have a situs in the taxing district in which the same are located. * * * The Department shall equalize and distribute the full, fair cash value of the property of every railroad company (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county clerks of the respective counties *who shall extend taxes against such values the same as against other property in such taxing districts.* (§ 86, as amended in 1943.)

(Railroads taxed as real estate.)

§ 569. Record book for railroad property

The county clerk shall procure, at the expense of the county, a record book, the form to be prescribed by the Department, in which to enter railroad property as listed for taxation, and shall enter the valuations assessed, corrected and equalized in the manner provided by law; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. * * * *The taxes on all railroad property shall be extended as on real estate, and shall be subject to the same penalties, dates of payment and methods of enforcement as other real estate taxes.* (Excerpts § 88, as amended in 1945.)

As to both State and local assessed corporate stocks, fair cash value was also the standard.

§ 612. Powers of Department of Revenue

The Department shall have power:

* * * * * * *

(10) To adopt, from time to time, rules not inconsistent with law, for ascertaining *the fair cash value of the capital stock*, including the franchise, of corporations assessed by it, for ascertaining the fair cash value of railroad property assessed by it, and for the guidance of local assessment officers relative to the assessment of property for taxation. (Excerpts § 131, as amended in 1943.)

EQUALIZATION OF ASSESSMENTS BY DEPARTMENT OF REVENUE.

§ 627. Authority of Department to equalize

The Department shall act as an equalizing authority. It shall examine the abstracts of property assessed for taxation in the several counties as returned by the county clerks and shall equalize the assessments as in this Act provided. The Department shall[1] lower or raise the total assessed value of property in any county as returned by the county clerk so that such property will be assessed at its full, fair cash value.

By means of a comparison of assessed valuations, as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable, the Department shall annually ascertain and determine the percentage relationship, for each county of the State, between the valuations at which locally-assessed property is listed by assessors and revised by boards of review or boards of appeals, as the case may be, and the estimated full, fair cash value of such property.

With the ratio so ascertained and determined for each county, the Department shall then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent. (§ 146, as amended in 1945.)

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[1] This Section was amended in 1959 to provide for certifications of equalization factors (multipliers) only in quadrennial assessment years rather than annually, but the section remained unchanged in requiring the Department to ascertain the level of assessment which resulted from the multipliers so certified for every year.

§ 632. Certification of equalization rates and Department assessments

When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks the percentage finally determined by it to be added to or deducted from the listed or assessed valuation of property in the several counties, as returned by the respective county clerks. The respective assessments made by the Department on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroad companies) shall be certified by it to the county clerks of the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such companies or associations are located.

The Department shall also certify to the county clerks of the proper counties the assessments made by it on property owned or used by railroad companies operating within this State, and the distribution of such assessments among the respective taxing districts within the several counties. The county clerks shall extend the taxes for all purposes on the respective amounts so certified, the same as against other property in the taxing districts to which such assessments of railroad property are allocated or distributed.

The assessments on the capital stock, including the franchise, of telegraph companies shall also be certified to the county clerks by the Department. (§ 151, as amended in 1945.)

§ 675. Payment of taxes—Payments under protest

Current taxes on real property shall be payable in 2 equal installments. The Collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. * * *

If any person desires to object pursuant to the provisions of Section 235 of this Act,[1] to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of said tax installments due, and such payment shall be accompanied by a (written protest) * * *

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes. * * *

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter

judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. * * * (Excerpts of § 194, as amended in 1957.)

§ 716. Proceedings by court—Form of order—Cure of error or informality

The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the count shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: * * * (Excerpt § 235.)

APPENDIX C

CLASS I RAILROADS: NET OPERATING INCOME, CAPITAL EXPENDITURES AND PERCENTAGE OF DOMESTIC INTERCITY FREIGHT TRAFFIC 1950-1961*

	1950	1955	1957	1958	1959	1960	1961
Net Railway Operating Income (Millions).....	$1,040	$1,120	$923	$762	$748	$585	$538
Expenditures for Capital Improvements (Millions):							
Equipment	779	568	1,008	489	568	633	427
Roadway & Structures..	286	340	387	258	250	286	319
% of Total Volume of Intercity Freight Traffic as compared to other means of transportation.....	57.44%	50.43%	47.62%	46.68%	45.68%	44.32%	43.86%
Average mi. of road operated in 000s.....	150	NA	113	NA	NA	88	85

NA means not available from Obj. Exh. 78.

APPENDIX D

COMPARISON OF SALES TO ASSESSMENTS FOR RAILROADS OMITTED FROM PEOPLE'S EX. NO. 104

Railroad	System Mileage	Yr. of Sale	Selling Price Ill. Operating Property	Assessment	Asmts. ÷ Straight Av. of 3 Value Indicators*	Assessment ÷ by Selling Price
Burlington R. R. Co.	7,972	1961	$120,761,956	$140,450,000	76%	116%
Baltimore & Ohio R. R. Co.	5,600	1961-64	25,875,920	26,565,000	82%	103%
Mpls. & St. Louis R. R. Co.	1,506	1960	3,913,977	3,900,000	68%	99%
Illinois Terminal R. R. Co.	344	1954	17,911,450	19,200,000	83%	107%
Illinois Northern R. R. Co.	10	1949	960,000	1,200,000	75%	129%
Indiana Harbor Belt R. R. Co.	N.A.	1961	11,075,950	12,950,000	70%	117%
Average						118%

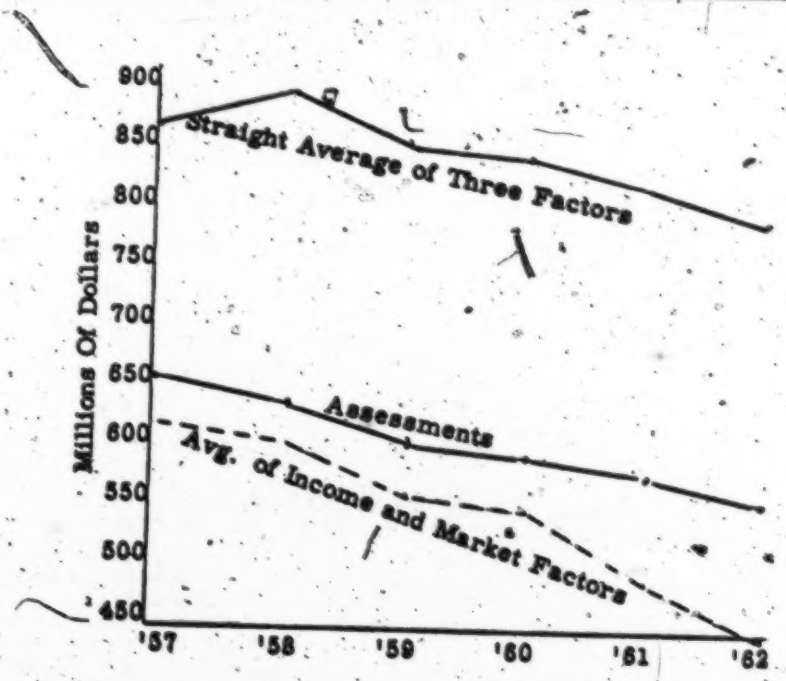
APPENDIX E

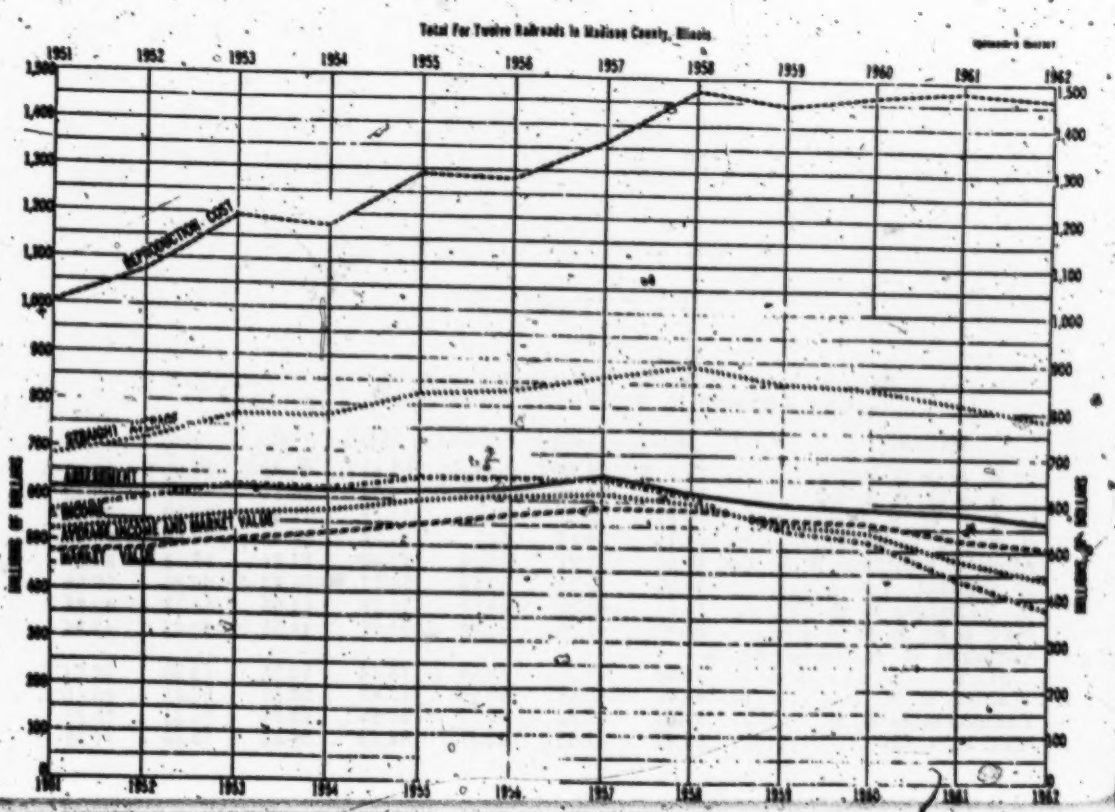
COMPARATIVE WEIGHT OR INFLUENCE OF REPRODUCTION COST FACTOR IN STRAIGHT FORMULAIC AVERAGE*

Railroad	1957	1958	1959	1960	1961	1962	1963
G. M. & O. R. R. Co.	50.6 %	55.38%	56.59%	58.61%	61.64%	63.00%	60.43%
C. B. & Q. R. R. Co.	50.94	54.29	55.44	56.04	56.81	58.39	55.53
C. & N. W. R. R. Co.	70.52	73.31	71.1	71.58	74.8	72.33	73.07
C. & E. I. R. R. Co.	48.11	50.13	51.	51.52	56.42	60.56	58.56
Alton & Southern R. R. Co.	30.66	31.81	33.54	34.65	37.21	37.78	34.8
Ill. Central.....	46.85	49.78	52.38	54.17	58.92	60.99	59.58
Ill. Terminal R. R. Co.	43.67	47.60	55.54	58.28	56.62	54.19	60.21
NYC & St. L. R. R. Co.	38.98	41.38	40.48	41.09	41.52	44.23	47.91
Terminal R. R. Assoc. of St. L.	46.68	49.02	49.54	48.96	50.75	52.20	56.54
Wabash R. R.	46.00	46.38	46.80	49.89	53.50	57.98	49.15
Pennsylvania R. R.	61.63	63.92	66.18	67.71	73.26	75.31	75.67
NYC R. R. Co.	59.45	61.58	63.71	63.62	68.52	72.35	77.35

APPENDIX F

GRAPHS ILLUSTRATING REASONABLE EXERCISE OF RAILROAD ASSESSMENT AUTHORITY BY DEPARTMENT OF REVENUE





APPENDIX G

ASSESSMENTS OF ILLINOIS RAILROADS
1938-1962
(Amounts in Thousands of Dollars)

	Class I Railroads		All Railroads	
	Equalized*	100% Full Value	Equalized*	100% Full Value
1938	$ 352,248	$ 633,120	$ 346,231	$ 948,616
1939	249,174	623,817	347,526	928,058
1940	220,459	629,884	318,477	909,936
1941	220,731	630,659	318,482	909,949
1942	220,740	668,909	315,065	954,742
1943	391,271	724,576	550,094	1,018,693
1944	374,008	733,350	520,147	1,019,897
1945	363,874	791,031	493,196	1,069,992
1946	.....	823,779	.....	1,093,748
1947	.....	819,924	.....	1,077,459
1948	.....	840,145	.....	1,078,971
1949	.....	843,168	.....	1,086,196
1950	.....	830,400	.....	1,075,593
1951	.....	837,510	.....	1,084,964
1952	.....	840,075	.....	1,088,193
1953	.....	848,200	.....	1,096,730
1954	.....	844,840	.....	1,090,815
1955	.....	847,995	.....	1,095,390
1956	.....	849,320	.....	1,098,034
1957	.....	856,150	.....	1,107,399
1958	.....	849,645	.....	1,090,335
1959	.....	824,830	.....	1,055,263
1960	.....	809,200	.....	1,032,528
1961	.....	805,020	.....	1,027,008
1962	.....	785,525	.....	998,363

* No equalization after 1945.

APPENDIX H.

Table Comparing Assessments in a Particular Year With the Immediately Preceding Year's Assessment to Show Lack of Uniform Treatment of Railroads by Assessing Officials and the Absence of a Policy of "HOLDING THE LINE".

(Source: For years 1935 through 1938 sources are Tax Commission Official Reports in evidence; for years 1939 and 1940 the 22 assessments shown are from Krucks' Exhibit of assessment history of 22 Class I Railroads, but the high and low percentage assessments are from the Department Reports; from 1941 through 1951 the 22 railroads are those shown on the Krucks' Exhibit and the reader is referred to the name of the railroad for the high increase and the high decrease percentages; for the years 1952 and 1953 and 1955 through 1961 the number of railroads shown are taken from the Department of Revenue Tables in evidence as noted, which are in consecutive tables; the 1954 assessment compared with 1953 takes all railroads appearing on both tables into account, not just Class I railroads, to determine if a larger sample would have any effect on the remainder of the exhibit, which it did not seem to have. Data for making the 1961-1962 computations is not in the record.)

Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1936 to 1935 (Assessments)	A 283.	All Roads	28	49	3	62%	27.5%
1937 to 1936 (Assessments)	B 284	All Roads	35	39	5	37%	30%
1938 to 1937 (Full value from now forward)	B 284 (Table xi)	Class I	11	20	0	31% (T.P.&W.)	12% (Chi., Ind. & Louisville)
1939 to 1938	D C 286	22 Class I	11	11	0	34.49%	24.08%
1940 to 1939	D C 287	22 Class I	12	7	3	135.29%	47.54%
1941 to 1940	D	22 Class I	10	7	5	5% (C&NW)	7% (Wab.)
1942 to 1941	D	22 Class I	21	1	0	11% (C&NW)	2% (Nickel Plate)
1943 to 1942	D	22 Class I	21	1	0	13% (C&NW)	1% (I. C.)
1944 to 1943	D	22 Class I	12	5	5	5% (C&NW)	12.5% (So.)
1945 to 1944	D	22 Class I	17	4	1	23% (Mo. Pac.	7% (Soo)
1946 to 1945	D	22 Class I	19	2	1	6% (I. C.)	18% (T. P. & W)
1947 to 1946	D	22 Class I	3	7	12	5% (Wab)	14% (T.P.&W)
1948 to 1947	D	22 Class I	10	5	7	11% (TP&	8% (Penn.)

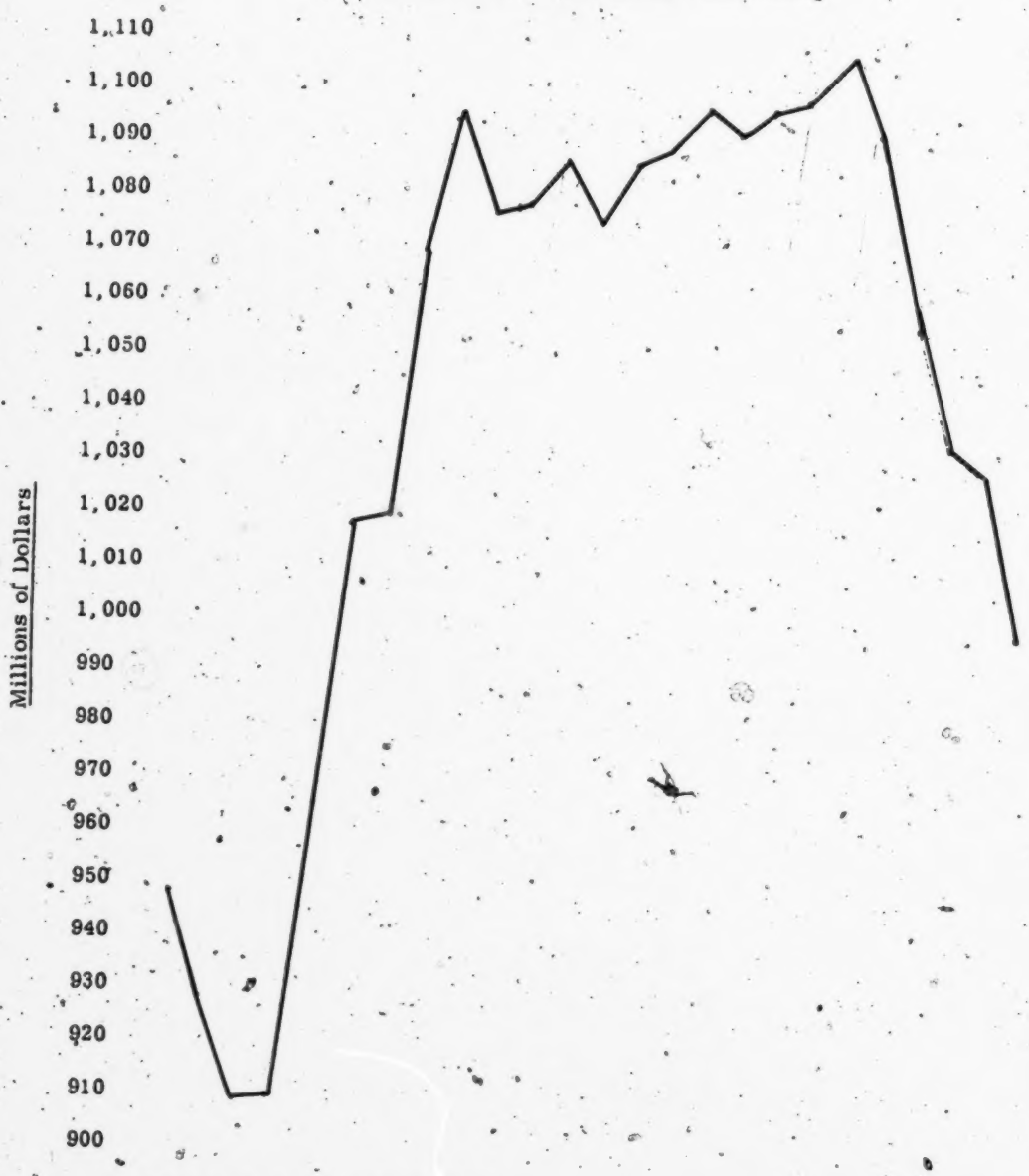
Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1949 to 1948	D	22 Class I	5	2	15	20% (TP& W)	2% (Penn.)
1950 to 1949	D	22 Class I	5	10	7	10% (TP& W)	5% (N. Y. C.)
1951 to 1950	D	22 Class I	14	4	4	18% (C&O)	3% (Penn.)
1952 to 1951	F E	All Class I	19	5	5	12% (C&O)	1% (Ill. Term)
1953 to 1952	G	All Class I	26	10	2	31% (C&O)	3% (Ill. Term)
1954 to 1953	H	All RR's Assessed by State	5	49	17	5% (Ind. Har. Belt)	4% (Mil. Rd.)
1955 to 1954	I	Class I	23	4	11	5% (C&EI)	4% (C&NW)
1956 to 1955	J	Class I	20	3	16	10% (C&O)	6% (Ill. Term)
1957 to 1956	K	Class I	28	4	5	6% (C&EI)	6% (C&NW)
1958 to 1957	L	Class I	1	28	9	0.7% (C& NW)	9% (Union Station)
1959 to 1958	M	Class I	0	34	4	None	9% (Chicago River & Ind.)
1960 to 1959	N	Class I	4	27	8	2% (St. L. Southwestern)	10% (Chicago & W. Ind.)
1961 to 1960	O	Class I	5	31	1	5% (St. L. Southwestern)	3% (Wab.)

Sources:

A. Coll. Exh. 36, Pages of Abst. Vol II as Noted.
B. Coll. Exh. 37, Pages of Abst. Vol II as Noted.
C. Coll. Exh. 38, Pages of Abst. Vol II as Noted.
D. Obj. Exh. 103, Abst. Vol II, 219-21.
E. Coll. Exh. 5, Abst. Vol II, 273.
F. Coll. Exh. 6, Abst. Vol. II, 274.
G. Obj. Danis Exh. 1A, Abst. Vol II, 240.
H. Coll. Exh. 8, Abst. Vol. II, 275.
I. Obj. Danis Exh. 1B, Abst. Vol II, 241.
J. Coll. Exh. 10, Abst. Vol II, 276.
K. Obj. Exh. 38A, Abst. Vol II, 85.
L. Obj. Exh. 38C, Abst. Vol II, 87.
M. Obj. Exh. 38E, Abst. Vol II, 89.
N. Obj. Exh. 38G, Abst. Vol II, 91.
O. Obj. Exh. 38I, Abst. Vol II, 93.

APPENDIX I

"FAIR CASH VALUE" OF RAILROAD
OPERATING PROPERTY IN ILLINOIS
1938 - 1962 *
Total - All Major Class I Railroads

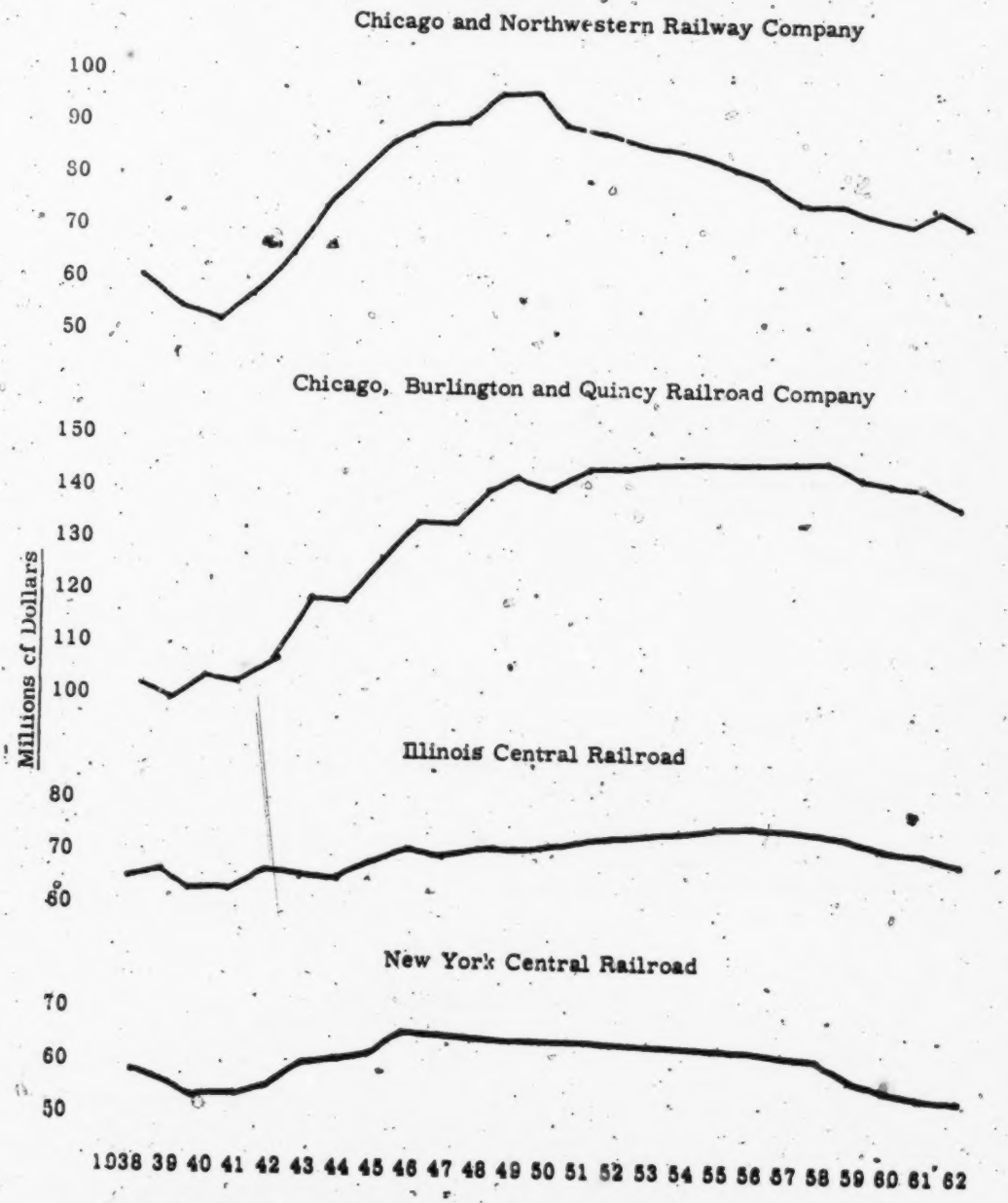


* Source: Objectors' Exhibit 103 and Collector's Exhibit 59A.

APPENDIX J

INDIVIDUAL GRAPHS SHOWING FLUCTUATIONS IN RAILROAD ASSESSMENTS, 1938-1962

FAIR CASH VALUE OF OBJECTORS' OPERATING PROPERTY IN ILLINOIS 1938 - 1962 *



*(Source: Objectors' Exhibit 103. Alton and Southern Railroad and Terminal Railroad Association are not included because they are not Major Class I railroads.)

APPENDIX J (Cont'd)